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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/724,271

11/26/2003

Rasmus B. Jensen

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C/O IP DOCKETING DEPARTMENT

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FALLS CHURCH, VA 22042-2924

EXAMINER

ANGEBRANNDT, MARTIN J

ART UNIT

PAPER NUMBER

1756

MAIL DATE

DELIVERY MODE

05/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/724,271	Applicant(s) JENSEN ET AL.	
	Examiner Martin J. Angebrannt	Art Unit 1756	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: none.
 Claim(s) objected to: none.
 Claim(s) rejected: 1-14 and 26-30.
 Claim(s) withdrawn from consideration: 15-25 and 31.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.


 Martin J. Angebrannt
 Primary Examiner
 Art Unit: 1756

Continuation of 3. NOTE: The description of the composition being membrane free is newly proposed in claims 1,12 and 29.

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's position that octyl-beta-D-glucoside is not a detergent and that it cannot solubilize pR monomers, conflicts with the evidence on the record that it is considered a detergent and can form micelles to stabilize bR (See Dencher et al., FEBS lett., Vol. 96(2) pp. 322-326 (12/1978) and the use of it to extract pR from membranes by Krebs, et al., J Chem. Phys. B 107 (page 7877, second page, left column) which indicates that it indeed solubilizes pR. Further, the applicant's position fails to account for dioleophospholipids being the detergent, which the beads absorb the excess of (Fredrich et al. (J. Mol. Biol.) and that it forms micelles (Krebs et al. BMC Phys). Further, to be commensurate with the applicant's argument, the claims should all exclude "cellular membrane", as the solid material can be in the form of a membrane/thin film. Further, the purification using a cholate washed phenylsepharose LC column and a hydroxyapatite LC column is described by Krebs et al. BMC Physiology (page 2 of 8 right column) and dovetails with the HPLC separation of the isomers described on page 834 of Fredrich et al., J. Mol. Biol.. Clearly increased purity of materials is desirable and in the case of the prior art of record shown to be achievable. The language added to claims 26 and 28 do not preclude the entire medium being exposure (no "only" language). The language added to claims 26 and 28 do not advance prosecution. The limitations argued have not been entered. The limitations of claims 11 would embrace the same matrix incorporating to different forms of the pR or different concentrations in different areas of the same matrix and so any variation in the exposure across the materials would result in this inherently, noting that the (matrix) materials do not have to be different to meet the claim. The applicant's arguments fail to differentiate between the cellular membrane and lipid bilayers and so is flawed in its analysis (see response at page 8) When the matrix materials (PVA, gelatin, etc) is added there is every reason to expect increased stability. The arguments concerning differences in sequences to argue that bR and pR are not similar is without merit on the similarities of these proteins in function and the purification of them. (see Krebs).

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4/2/22